

## **LAKE COUNTY INCUBATOR AGREEMENT**

**THIS AGREEMENT** is effective by and between **LAKE COUNTY**, a political subdivision of the State of Florida, whose address is the Office of Economic Development and Tourism, 315 W. Main Street, Suite 520, Tavares, FL 32778 hereinafter referred to as the "COUNTY," **the CITY OF LEESBURG, FLORIDA**, a Florida Municipal Corporation, whose address is 501 W. Meadow Street, Leesburg, FL 34749 hereinafter referred to as the "CITY", and the **UNIVERSITY OF CENTRAL FLORIDA RESEARCH FOUNDATION**, a 501 (c)(3) direct support organization of the University of Central Florida ("UCF") which supports the research and sponsored program activities of faculty, staff, and students, whose address is 12201 Research Parkway, Suite 501, Orlando, FL 32826, hereinafter referred to as the "UCFRF".

### **W I T N E S S E T H:**

**WHEREAS**, it is the policy of the COUNTY to aggressively stimulate economic growth in Lake County by, among other things, either attracting new industries and businesses to Lake County or by encouraging the expansion of existing industries and businesses within Lake County; and

**WHEREAS**, the creation of new employment opportunities for residents of Lake County and the increased tax revenues resulting from such industry or business expansion and relocation within Lake County is beneficial to the local economy; and

**WHEREAS**, Lake County has the fiscal capacity to conduct and accomplish the programs relating thereto; and

**WHEREAS**, UCFRF has proposed and demonstrated to the COUNTY that they can fully and adequately provide administrative support, consistent with the terms of this Agreement, for the UCF Lake County/Leesburg Business Technology Incubator; and

**WHEREAS**, the CITY owns real property located at 600 Market Street, Leesburg, that has been and will continue to be used as the Business Technology Incubator; and

**WHEREAS**, UCFRF, CITY, and the COUNTY desire to enter into this Agreement for the purpose of encouraging job growth and economic development in Lake County; and

**WHEREAS**, the COUNTY has determined that in order to enhance and preserve the economic well-being and health and welfare of the citizens of the COUNTY it is necessary, proper and desirable to enter into this Agreement with UCFRF in order to enhance the economic development of Lake County.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

**SECTION 1. RECITALS.** The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

**SECTION 2. PURPOSE.** The purpose of this Agreement is for UCFRF to provide the following services to the COUNTY in the manner hereinafter set forth. UCFRF will leverage the

resources and infrastructure in place at UCF, specifically at the UCF Technology Incubator to aide in the development of companies located in the Lake incubator. This includes:

- Use the existing client application and screening process and oversee selection process. This includes using the Excellence in Entrepreneurship Course developed for UCFRF.
- Utilize UCFRF service provider network and expand to include additional resources focused on later stage incubator companies.
- Utilize educational programs available through the NEC and resident small business service providers.
- Provide marketing for the Incubator and its clients.
- Use existing criteria to graduate companies out of the program.
- Provide staffing for the Incubator.
- Providing annual reports which shall include, but not be limited to, recommendations relative to the continuing development and operation of the Lake County Incubator. Additionally, on or before May 1, of each year of this agreement UCFRF will provide a verbal report to the Board of County Commissioners.
- In summary, UCFRF will continue to operate an incubator in cooperation with Lake County at the Leesburg Business and Technology Center. This includes hiring, training, and managing staff, selecting and managing clients, establishing mentoring and coaching programs, and establishing criteria for graduating companies into the community.

**SECTION 3. SERVICES.** The COUNTY agrees to purchase and UCFRF agrees to furnish, during the term of this Agreement, the services described in Section 2 of this Agreement.

**SECTION 4. FACILITY.** The CITY agrees to allow the property located at 600 Market Street, Leesburg, Florida to be utilized as the Business Technology Incubator for so long as this Agreement is in effect, or any renewal thereof.

**SECTION 5. BILLING AND PAYMENT.** The COUNTY hereby agrees to pay UCFRF the sum of eighty-five thousand dollars (\$85,000) for all services provided hereunder by UCFRF during the one year term of this Agreement. Said sum is payable each quarter in increments of twenty-one thousand two hundred fifty dollars (\$21,250).

**SECTION 6. TERM.** This Agreement shall be effective from the date the last party hereto executes this Agreement, and shall remain effective for one (1) year thereafter.

**SECTION 7. REPORTS.** UCFRF shall provide the COUNTY with a semi-annual report regarding the activities pursuant to this Agreement. The report shall be provided every six (6) months until this Agreement is terminated.

**SECTION 8. FORCE MAJEURE.** In the event any party hereunder fails to satisfy a requirement imposed in a timely manner, due to a hurricane, flood, tornado, or other act of God or force majeure, then said party shall not be in default hereunder; provided, however, that performance shall recommence upon such event ceasing its effect.

**SECTION 9. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees and designees of the parties.

**SECTION 10. ASSIGNMENT.** This Agreement shall not be assigned by either party without the prior written approval of the other.

**SECTION 11. PUBLIC RECORDS.** In accordance with Florida law, UCFRF shall allow public access to all documents, papers, letters or other materials which have been made or received by UCFRF in conjunction with this Agreement, unless otherwise exempted by Florida law.

**SECTION 12. RECORDS AND AUDITS.**

(a) UCFRF shall maintain in its place of business all non-exempt books, documents, papers and other evidence pertaining to work performed under this Agreement. Such non-exempt public records shall be and remain available at UCFRF's office at all reasonable times during the term of this Agreement and for five (5) years after Agreement closure.

(b) UCFRF agrees that the COUNTY and/or the CITY or its duly authorized representative shall, until the expiration of five (5) years after Agreement closure, have access to examine any of UCFRF's non-exempt books, documents, papers and records involving transactions related to this Agreement. UCFRF agrees that payments made under this Agreement shall be subject to reduction for amounts charged which are found on the basis of audit examination not to constitute allowable costs.

(c) All required records shall be maintained until an audit has been completed and all questions arising from it are resolved or until five (5) years after closure of the Agreement, in writing and submission of a final invoice, whichever is later. UCFRF will provide proper facilities for access to and inspection of all required records.

(d) The phrase "non-exempt," as used herein, means that the record is not exempt under the public records law of the State of Florida.

**SECTION 13. NOTICES.**

(a) Whenever either party desires to give notice unto the other, notice may be sent to:

**For COUNTY:**

County Manager  
315 West Main Street  
P.O. Box 7800  
Tavares, Florida 32778

Cc: Scott Blankenship, Director  
Office of Economic Development & Tourism  
315 W. Main Street, Suite 520  
P.O. Box 7800  
Tavares, FL 32778

**For CITY:**

Kenneth Thomas, MPA  
Director of Economic Development & Housing  
600 Market Street

Leesburg, Florida 34748

**For UCFRF:**

**Technical:**

Dr. Thomas O'Neal  
University of Central Florida Research Foundation  
12201 Research Parkway, Suite 501  
Orlando, FL 32826-3246

**Administrative:**

Kim Smith, Associate Director  
Office of Research & Commercialization  
12201 Research Parkway, Suite 501  
Orlando, FL 32826-3246

(b) Either of the parties may change, by written notice as provided herein, the address or persons for receipt of notices or invoices. All notices shall be effective upon receipt.

**SECTION 14. INDEMNITY AND INSURANCE.**

(a) Each party to the Agreement is responsible for all personal injury and property damage attributable to the negligent act or omissions of that party and officers, employees and agents thereof.

(b) The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State of Florida, nor as a waiver of sovereign immunity of either Party beyond the waiver provided for in Section 768.28, Florida Statutes.

(c) UCFRF shall provide necessary workers compensation coverage and unemployment compensation for its employees.

**SECTION 15. CONFLICT OF INTEREST.**

(a) UCFRF agrees that it will not knowingly engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY, or CITY or which would knowingly violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) UCFRF hereby certifies that no officer, agent or employee of the COUNTY or the CITY has any material interest (as defined in Section 112.312, Florida Statutes) either directly or indirectly, in the business of UCFRF to be conducted here and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, Florida Statutes, UCFRF hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or other State or Federal Agency.

## **SECTION 16. EQUAL OPPORTUNITY EMPLOYMENT.**

(a) UCFRF agrees that it will not discriminate against any contractor, employee or applicant for employment or work under this Agreement because or on account of race, color, religion, sex/ age or national origin and will insure that applicants and employees are treated during employment without regard to race, color, religion, sex, age or national origin. This provision shall include but not be limited to, the following: retention, award of contracts, employment, promotion, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(b) UCFRF agrees that it will comport all of its activities with the provisions of Chapter 760, Florida Statutes.

**SECTION 17. COMPLIANCE WITH LAWS AND REGULATIONS.** In performing under this Agreement, the parties shall abide by all applicable laws, statutes, ordinances, rules and regulations pertaining to, or regulating the performance set forth herein, including those now in effect and hereinafter adopted. Any material violation of said laws, statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement, and shall entitle the non-violating party to terminate this Agreement immediately upon delivery of written notice of termination to the violating party.

## **SECTION 18. EMPLOYEE/UCFRF STATUS.**

(a) Persons employed or retained by UCFRF in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the either the CITY'S or COUNTY's officers and employees either by operation of law or by the COUNTY or the CITY.

(b) UCFRF assumes total responsibility for salaries, employment benefits, contractual rights and benefits, contract payments, and Federal, State and local employment taxes, if any, attributable to UCFRF personnel or contractors and agrees, to the extent permitted by Section 768.28, Florida Statutes, to indemnify and hold the COUNTY and the CITY harmless from any responsibility for same.

(c) In performing this Agreement, equipping and operating the project, or carrying out any of the activities to be carried out by UCFRF, UCFRF will be acting independently, in the capacity of an independent entity and not as a joint venture, associate, employee, agent or representative of the COUNTY or the CITY.

**SECTION 19. NO THIRD PARTY BENEFICIARIES.** This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns, including any successor in interest to UCFRF's interest in the Project and is not intended to and shall not benefit a third party. No third party shall have any rights hereunder or as a result of this Agreement or any rights to enforce any provisions of this Agreement.

**SECTION 20. CONTINGENT FEES/CONFLICTING EMPLOYMENT.** UCFRF covenants that it has employed and retained only bona fide employees working for UCFRF and attorneys and consultants, to solicit or secure this Agreement. The COUNTY warrants that it has not paid or agreed to pay any personal company, corporation, individual or firm, other than a bona fide employee working for UCFRF any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of making this Agreement.

**SECTION 21. GOVERNING LAW.** This Agreement shall be construed and interpreted according to the laws of the State of Florida.

**SECTION 22. CONSTRUCTION OF AGREEMENT.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all parties, COUNTY, CITY and UCFRF have contributed substantially and materially to the preparation hereof.

**SECTION 23. CONSTITUTIONAL AND STATUTORY LIMITATION ON AUTHORITY OF THE COUNTY.** The terms and conditions of this Agreement placed upon the COUNTY or the CITY are applicable only to the extent they are within and consistent with the constitutional and statutory limitation of the authority of the COUNTY or the CITY. Specifically, the parties acknowledge that the COUNTY or the CITY is without authority to grant or pledge a security interest in any of the COUNTY'S or CITY'S revenue.

**SECTION 24. TERMINATION.** Any party may terminate this Agreement upon thirty (30) days written notification to the others. In the event of termination, UCFRF will be reimbursed for all costs incurred and any non-cancelable obligations properly incurred through the date of termination. Any funds remaining shall be promptly returned to the COUNTY.

**SECTION 25. COUNTERPARTS.** This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be original, but all counterparts shall together constitute one and the same instrument.

**SECTION 26. HEADINGS.** All sections and descriptive headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

**SECTION 27. SEVERABILITY.** If any provision, term or clause of this Agreement is determined to be invalid or unenforceable, then such provision term or clause shall be null or void and shall be deemed separable from the remaining covenants of this Agreement and shall in no way affect the validity of the remaining covenants and provisions of this Agreement.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the dates indicated below.

UNIVERSITY OF CENTRAL FLORIDA  
RESEARCH FOUNDATION

\_\_\_\_\_  
Print name: Kim Smith  
Title: Associate Director

\_\_\_\_\_  
Print name: Kim Smith  
Title: Associate Director

This \_\_\_\_\_ day of \_\_\_\_\_, 2012

ATTEST:

**COUNTY**

\_\_\_\_\_  
Neil Kelly, Clerk of the  
Board of County Commissioners  
of Lake County, Florida

\_\_\_\_\_  
Leslie Campione  
Chairman

This \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Approved as to form and legality:

\_\_\_\_\_  
Sanford A. Minkoff  
County Attorney

ATTEST:

**CITY**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Approved as to form and legality:

\_\_\_\_\_  
City Attorney